

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED (11)
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BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN DETROIT

IN RE:

JOSEPH BRECKOW
ELIZABETH BRECKOW,

Case No. 05-40402
Chapter 7

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING DEBTORS' "APPLICATION TO CONVERT
FROM CHAPTER 7 TO CHAPTER 13 PURSUANT TO
BANKRUPTCY CODE 706(a)(c)"**

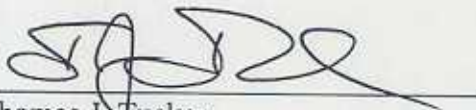
This case is before the Court on a motion filed on June 7, 2005 by Debtors entitled "Application to Convert from Chapter 7 to Chapter 13 Pursuant to Bankruptcy Code 706(a)(c)." On July 20, 2005, Debtors filed a "Certificate of No Response," indicating that no one had timely objected to the motion. Upon consideration, however, the Court must deny the motion.

Debtors filed this case under Chapter 13 on January 6, 2005. Debtors later voluntarily converted the case to Chapter 7 under 11 U.S.C. § 1307(a). The order of conversion was filed February 17, 2005. Debtors now seek to convert the case back to Chapter 13.

As this Court previously held in another case, however, 11 U.S.C. § 706(a) precludes such a conversion to Chapter 13, because this case was previously converted from Chapter 13 to Chapter 7 under § 1307. *See In re Jerry Gaines and Gloria Briggs*, Case No. 04-63830 (bench opinion, February 24, 2005)(copy of transcript attached); *see also In re Banks*, 252 B.R. 399 (Bankr. E.D. Mich. 2000)(Rhodes, J.).

Accordingly, Debtors' "Application to Convert from Chapter 7 to Chapter 13 Pursuant to Bankruptcy Code 706(a)(c)," filed June 7, 2005, is denied.

Date: 7-27-05


Thomas J. Tucker
United States Bankruptcy Judge

cc: Neal J. Brand
Basil Simon, Trustee

A TRUE COPY

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

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BY: 
DEPUTY CLERK
DATE: JUL 27 2005

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the matter of:

JERRY GAINES and GLORIA
BRIGGS,

Debtors

Case No. 04-63830

Detroit, Michigan
Thursday, February 24, 2005
Judge Tucker

EXCERPT OF HEARING: RULING OF THE COURT ON
MOTION TO RECONVERT CASE FROM CHAPTER 7 BACK TO CHAPTER 13

BEFORE THE HONORABLE THOMAS J. TUCKER, BANKRUPTCY JUDGE

TRANSCRIPT ORDERED BY: JUDGE THOMAS J. TUCKER

APPEARANCES:

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2005 FEB 19 A 9:12
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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1 Detroit, Michigan

2 Thursday, February 24, 2005

3 Morning Session

4 * * *

5 (At about 10:08 A.M. - excerpt begins.)

6 THE COURT: The first issue that I think the Court
7 confronts in considering this motion is whether the Court may
8 allow reconversion. as it's been called in the motion. What
9 it is is whether the Court may allow conversion by the Debtor,
10 Mr. Gaines, to Chapter 13 from Chapter 7 when there was
11 previously a conversion of Mr. Gaines' Chapter 13 case to
12 Chapter 7 under Section 1307 of the Code.

13 Under 706(a) of the Bankruptcy Code the Debtor, Mr.
14 Gaines, does not in this circumstance have a right to convert
15 the case voluntarily to Chapter 13 because the exception in
16 Section 706(a) applies. That is, the case has been converted
17 under Section 1307 previously. Therefore the right, whether
18 it's an automatic right or a right subject to objections based
19 on bad faith or other grounds, the cases are a little -- are
20 -- differ on that question. But whichever it is under 706(a),
21 that right does not apply here because this case was
22 previously converted, voluntarily I might add, by the Debtor,
23 Mr. Gaines, from Chapter 13 to Chapter 7, where it now rests.

24 In my view the answer to this first issue, first
25 question is that the Court does not have the authority or --

1 to, under the Bankruptcy Code, under Section 105(a), under
2 Section 706(a), or under any other section of the Code to
3 permit conversion of this case back to Chapter 13 on the
4 Debtor's voluntary request, and therefore the motion, styled a
5 motion of reconversion, et cetera, must be denied for that
6 reason.

7 I want to explain briefly why I come to this
8 conclusion. First, I have read the decision of this court
9 through Judge Rhodes in the Banks case, which did hold
10 consistent with the ruling that I'm making today, that in
11 these circumstances reconversion or conversion back to Chapter
12 13 is not permitted. The Banks case, for the record, is *In*
13 *re: Banks*, 252 B.R. 399, a decision of the Bankruptcy Court
14 of this district from 2000.

15 I -- I would -- while I would agree with the result
16 in Banks, I would add a couple points to the reasoning of the
17 court in Banks, and depart possibly somewhat from the
18 reasoning of the court in Banks. Except as -- as indicated, I
19 do agree with the reasoning and holding of the court in Banks.

20 First, I don't -- I don't find Section 706(a) or
21 706(d) to be ambiguous on this question before the Court today
22 at all. 706(a) is, in my view, unambiguous in -- to the
23 extent that it does not permit conversion in this circumstance
24 because there has been previously a conversion under Section
25 1307.

1 13 -- Section 706(d) is not ambiguous in this
2 context because 706(d) does not authorize conversion. It
3 merely creates a limitation on conversion, when conversion
4 otherwise is permissible. One of the limitations of 706(d) is
5 that a debtor in Chapter 7 may not be converted to Chapter 13
6 without requesting it; that is, involuntarily against the
7 debtor's wishes. That's consistent with the general
8 Bankruptcy Code policy that Chapter 13 is a voluntary
9 provision and debtors may not be forced into it against their
10 will. And there is no other provision in the Bankruptcy Code
11 that authorizes conversion from a Chapter 7 to a Chapter 13 in
12 this circumstance.

13 I view that fact and the fact that Section 706 does
14 not authorize conversion in this circumstance as indicative of
15 congressional intent that there be no such right to convert
16 and that there be no such conversion permitted. Part of my
17 reasoning for that is -- is by contrasting the wording of
18 Section 706, in particular 706(a), with the wording of Section
19 707(a) and Section 1307(a). Section 1307(a) is the provision
20 that allows a debtor to voluntarily convert a case from
21 Chapter 13 to Chapter 7 at any time.

22 So that the first sentence of 1307(a) is virtually
23 identical in structure to the first sentence of Section 706(a)
24 except that it does not contain, nor does 1307(a) or any other
25 provision of the Code contain any limitation on the Chapter 13

1 debtor's right to convert that -- that limits or excludes the
2 situation where the case had been previously converted under
3 another section of the Code from a different chapter of the
4 Code.

5 So for example, if a debtor began in Chapter 7,
6 converted to Chapter 13, and then under 1307(a) sought to
7 voluntarily convert back to Chapter 7, 1307(a) would permit
8 that, notwithstanding the prior conversion from 7 to 13. That
9 contrast between the wording of 1307(a) and the wording of
10 706(a), which does contain such a limitation, in my view
11 clearly indicates congressional intent that conversion under
12 706(a) not be permitted when there has been a prior conversion
13 under 1307, at least a conversion to Chapter 13 here.

14 The -- my reference to Section 706(a) is that --
15 simply to further contrast. In that section Congress
16 permitted a debtor, among others, after notice and hearing and
17 for cause, to voluntarily dismiss a -- dismiss a Chapter 7
18 case and does not limit that -- that right to seek voluntary
19 dismissal to -- by excluding cases -- Chapter 7 cases from
20 dismissal voluntarily when they -- on the grounds that they've
21 been previously converted from another chapter. These
22 provisions, especially the contrast of 1307(a) in my view
23 indicate congressional intent, as I said, to prohibit
24 conversion in this circumstance.

25 That, combined with the fact that no provision in

1 the Code authorizes conversion in the circumstance to Chapter
2 13 persuades me that I am not permitted -- the Court is not
3 permitted to authorize and grant conversion in this
4 circumstance. Section 105(a) does not give the Court that
5 authority. In my view Section 105(a) -- while Section 105(a)
6 does say that the court may issue any order, process or
7 judgment necessary or appropriate to carry out provisions of
8 this title, there is no provision of this title, that is of
9 the Bankruptcy Code, Title 11, that would authorize conversion
10 in this circumstance, and therefore 105(a) does not apply.

11 Furthermore, 105(a) does not authorize conversion
12 here because that would be contrary to what I view as
13 congressional intent that conversion in this setting to
14 Chapter 13 not be permitted.

15 So for those reasons, I must and will deny the
16 Debtor's motion.

17 I would note, although not expressing any opinion on
18 it at this point or making any decision on the merits of this
19 argument, that if conversion in this circumstance were
20 discretionary or could be committed -- permitted for cause or
21 based on some other standard, bad faith -- there would be a
22 substantial question about bad faith and whether bad faith,
23 one, would be an adequate ground for preventing conversion, or
24 two, whether bad faith exists here. That does require an
25 inquiry into the totality of the circumstances, might require

1 an evidentiary hearing in this -- based on the arguments here,
2 but in my view it's not necessary to have such an evidentiary
3 hearing or decide that -- that issue or series of issues
4 because of my ruling on the right to convert and the authority
5 of the Court to convert.

6 So for those reasons the motion will be denied. I
7 will ask the trustee to prepare an order that says that for
8 the reasons stated by the Court on the record at the
9 conclusion of this hearing the motion is denied.

10 ALL PARTIES: Thank you, your Honor.

11 (At about 10:17 A.M. - hearing concluded.)

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I certify that the foregoing is a correct transcript of the
proceedings held in the above-entitled matter.

DATED: April 15, 2005


Lynn L. Simmons, Transcriber